



Rep. Mary E. Flowers

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LRB099 07473 HEP 32819 a

1 AMENDMENT TO HOUSE BILL 3287

2 AMENDMENT NO. _____. Amend House Bill 3287 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Probate Act of 1975 is amended by changing
5 Section 25-1 and adding Section 11-13.4 as follows:

6 (755 ILCS 5/11-13.4 new)

7 Sec. 11-13.4. Financial institution; guardianship accounts
8 established on behalf of minors.

9 (a) If an account at a financial institution is a
10 guardianship account established on behalf of a minor, the
11 terms of the account must provide for compliance with orders of
12 the court, if any, regarding the establishment and management
13 of that account. A financial institution has a duty to inquire
14 as to the existence of any court orders when opening a
15 guardianship account on behalf of a minor. If the financial
16 institution holds an account that is subject to a court order,

1 the financial institution must obtain a court order granting
2 the authority to release funds from the account. An order
3 authorizing the disbursement of funds in the account may be
4 granted only upon a showing of good cause.

5 (b) A guardian of a minor that establishes an account with
6 a financial institution on behalf of the minor pursuant to a
7 court order has a duty to present the court order to the
8 financial institution at the time the account is opened.

9 (c) The creation of and any withdrawals from a guardianship
10 account established on behalf of a minor that is subject to
11 this Section requires the signatures of 2 adult persons.

12 (d) A withdrawal of more than \$5,000 from a guardianship
13 account established on behalf of a minor that is subject to
14 this Section requires a court order.

15 (e) As used in this Section, "financial institution"
16 includes, but is not limited to, a bank, credit union,
17 investment company, savings bank, savings and loan
18 association, securities dealer, and trust company.

19 (755 ILCS 5/25-1) (from Ch. 110 1/2, par. 25-1)

20 Sec. 25-1. Payment or delivery of small estate of decedent
21 upon affidavit.

22 (a) When any person, corporation, or financial institution
23 (1) indebted to or holding personal estate of a decedent, (2)
24 controlling the right of access to decedent's safe deposit box
25 or (3) acting as registrar or transfer agent of any evidence of

1 interest, indebtedness, property or right is furnished with a
2 small estate affidavit in substantially the form hereinafter
3 set forth, that person, corporation, or financial institution,
4 upon examining and approving the documents presented by the
5 affiant which are attached to the small estate affidavit, shall
6 pay the indebtedness, grant access to the safe deposit box,
7 deliver the personal estate or transfer or issue the evidence
8 of interest, indebtedness, property or right to persons and in
9 the manner specified in the affidavit or to an agent appointed
10 as hereinafter set forth.

11 (a-5) A person, corporation, or financial institution may
12 not pay the indebtedness, grant access to the safe deposit box,
13 deliver the personal estate, or transfer or issue the evidence
14 of interest, indebtedness, property or right as provided in
15 subsection (a) of this Section, unless the affiant, or his or
16 her agent, has first obtained a court order as provided in this
17 subsection (a-5). A judge shall grant an order under this
18 subsection (a-5) if the affiant presents: (i) the small estate
19 affidavit; (ii) evidence of notice having been given to the
20 heirs or legatees identified in paragraph 10 of the affidavit;
21 and (iii) a petition asking the court to find that the
22 affidavit does not appear to have been fraudulently executed
23 and to grant access to property in the manner specified in
24 paragraph 11 of the affidavit. A person, corporation, or
25 financial institution has a duty to inquire as to the existence
26 of any court orders before taking action under this Section.

1 (b) Small Estate Affidavit

2 I, (name of affiant), on oath state:

3 1. (a) My post office address is: ;

4 (b) My residence address is: ; and

5 (c) I understand that, if I am an out-of-state
6 resident, I submit myself to the jurisdiction of Illinois
7 courts for all matters related to the preparation and use of
8 this affidavit. My agent for service of process in Illinois is:

9 NAME.....

10 ADDRESS.....

11 CITY.....

12 TELEPHONE (IF ANY).....

13 I understand that if no person is named above as my agent for
14 service or, if for any reason, service on the named person
15 cannot be effectuated, the clerk of the circuit court of
16(County) (Judicial Circuit) Illinois is recognized by
17 Illinois law as my agent for service of process.

18 2. The decedent's name is ;

19 3. The date of the decedent's death was , and I
20 have attached a copy of the death certificate hereto.

21 4. The decedent's place of residence immediately before his
22 death was ;

23 5. No letters of office are now outstanding on the
24 decedent's estate and no petition for letters is contemplated
25 or pending in Illinois or in any other jurisdiction, to my
26 knowledge;

1 6. The gross value of the decedent's entire personal
 2 estate, including the value of all property passing to any
 3 party either by intestacy or under a will, does not exceed
 4 \$100,000. (Here, list each asset, e.g., cash, stock, and its
 5 fair market value.);

6 7. (a) All of the decedent's burial and funeral expenses
 7 and other debts have been paid, or

8 (b) All of the decedent's known unpaid debts are listed and
 9 classified as follows (include the name, post office address,
 10 and amount):

11 Class 1: funeral and burial expenses, which include
 12 reasonable amounts paid for a burial space, crypt, or
 13 niche; a marker on the burial space; and care of the burial
 14 space, crypt, or niche; expenses of administration; and
 15 statutory custodial claims as follows:

16

17 Class 2: the surviving spouse's award or child's award, if
 18 applicable, as follows:

19

20 Class 3: debts due the United States, as follows:

21

22 Class 4: money due employees of the decedent of not more
 23 than \$800 for each claimant for services rendered within 4
 24 months prior to the decedent's death and expenses attending
 25 the last illness, as follows:

26

1 Class 5: money and property received or held in trust by
 2 the decedent which cannot be identified or traced, as
 3 follows:

4

5 Class 6: debts due the State of Illinois and any county,
 6 township, city, town, village, or school district located
 7 within Illinois, as follows:

8

9 Class 7: all other claims, including medical and credit
 10 card bills, as follows:

11

12 (Strike either 7(a) or 7(b)).

13 7.5. I understand that all valid claims against the
 14 decedent's estate described in paragraph 7 must be paid by me
 15 from the decedent's estate before any distribution is made to
 16 any heir or legatee. I further understand that the decedent's
 17 estate should pay all claims in the order set forth above, and
 18 if the decedent's estate is insufficient to pay the claims in
 19 any one class, the claims in that class shall be paid pro rata.

20 8. There is no known unpaid claimant or contested claim
 21 against the decedent, except as stated in paragraph 7.

22 9. (a) The names and places of residence of any surviving
 23 spouse, minor children and adult dependent* children of the
 24 decedent are as follows:

25	Name and	Place of	Age of
26	Relationship	Residence	minor child

1 * (Note: An adult dependent child is one who is unable to
2 maintain himself and is likely to become a public charge.)

3 (b) The award allowable to the surviving spouse of a
4 decedent who was an Illinois resident is \$..... (\$20,000,
5 plus \$10,000 multiplied by the number of minor children and
6 adult dependent children who resided with the surviving spouse
7 at the time of the decedent's death. If any such child did not
8 reside with the surviving spouse at the time of the decedent's
9 death, so indicate).

10 (c) If there is no surviving spouse, the award allowable to
11 the minor children and adult dependent children of a decedent
12 who was an Illinois resident is \$..... (\$20,000, plus
13 \$10,000 multiplied by the number of minor children and adult
14 dependent children), to be divided among them in equal shares.
15 If there is no surviving spouse and there are minor children,
16 the affiant must be a court appointed guardian for one or more
17 of the children. If this provision applies, the date of the
18 court order making this appointment was, and I have
19 attached a copy of the court order.

20 10. (a) The decedent left no will. The names, places of
21 residence and relationships of the decedent's heirs, and the
22 portion of the estate to which each heir is entitled under the
23 law, after all just debts and expenses described in paragraph 7
24 are fully paid, where decedent died intestate are as follows:

25 Name, relationship Age of Portion of

1 medical reasons as shown by the attached letter of a physician
 2 for the surviving spouse, based upon the physician's
 3 examination of the surviving spouse within 90 days prior to the
 4 date of the affidavit, attesting to and describing this
 5 disabling medical condition; or

6 ... has declined, refused, or asked affiant to prepare the
 7 small estate affidavit. The reason that the affiant has
 8 prepared this small estate affidavit rather than the surviving
 9 spouse is that (state here the precise time, date, and
 10 circumstances of the surviving spouse declining, refusing, or
 11 asking affiant to prepare the small estate affidavit):
 12

13 Attached is a statement of the surviving spouse in which
 14 the surviving spouse expressly declines or states that he or
 15 she refuses to prepare the small estate affidavit or expressly
 16 requests that the affiant prepare the small estate affidavit.
 17 This statement must be signed by the surviving spouse,
 18 witnessed by 2 persons unrelated to the affiant, and be
 19 notarized.

20 ~~10.3. My relationship to the decedent or the decedent's~~
 21 ~~estate is as follows:~~

22 10.5. (The following paragraph should appear in bold type
 23 and in not less than 14-point font):

24 I understand that the decedent's estate must be
 25 distributed first to satisfy claims against the decedent's
 26 estate as set forth in paragraph 7.5 of this affidavit

1 before any distribution is made to any heir or legatee. By
 2 signing this affidavit, I agree to indemnify and hold
 3 harmless all creditors of the decedent's estate, the
 4 decedent's heirs and legatees, and other persons,
 5 corporations, or financial institutions relying upon this
 6 affidavit who incur any loss because of reliance on this
 7 affidavit, up to the amount lost because of any act or
 8 omission by me. I further understand that any person,
 9 corporation, or financial institution recovering under
 10 this indemnification provision shall be entitled to
 11 reasonable attorney's fees and the expenses of recovery.

12 11. After payment by me from the decedent's estate of all
 13 debts and expenses listed in paragraph 7, any remaining
 14 property described in paragraph 6 of this affidavit should be
 15 distributed as follows:

16	Name	Specific sum or property to be distributed
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17 The foregoing statement is made under the penalties of
 18 perjury*.

19

20 Signature of Affiant

21 Signed and sworn before me on (insert date).

22

1 Notary Public

2 * (Note: A fraudulent statement made under the penalties of
3 perjury is perjury, as defined in Section 32-2 of the Criminal
4 Code of 2012.)

5 (c) Appointment of Agent. If safe deposit access is
6 involved or if sale of any personal property is desirable to
7 facilitate distribution pursuant to the small estate
8 affidavit, the affiant under the small estate affidavit may in
9 writing appoint one or more persons as the affiant's agent for
10 that purpose, provided that the writing contains the signature
11 of each person, is witnessed by 2 persons unrelated to the
12 affiant and is notarized, and also shows the written consent of
13 the surviving spouse and all adult children. The agent shall
14 have power, with ~~without~~ court approval, to gain access to,
15 sell, and distribute the property in the manner specified in
16 paragraphs 7.5 and 11 of the affidavit; and the payment,
17 delivery, transfer, access or issuance shall be made or granted
18 to or on the order of the agent. The affiant may appoint
19 himself or herself as the designated representative to exercise
20 the powers and perform the duties of an agent described in this
21 subsection (c).

22 (c-5) The affiant of a small estate affidavit shall submit
23 to the court proof of payment of all valid claims against the
24 decedent's estate described in paragraph 7.

25 (d) Reliance and Release. Any person, corporation, or
26 financial institution who, upon examination and approval of all

1 documents presented by the affiant with this small estate
2 affidavit, acts in good faith reliance on a copy of a document
3 purporting to be a small estate affidavit that is substantially
4 in compliance with subsection (b) of this Section shall be
5 fully protected and released upon payment, delivery, transfer,
6 access or issuance pursuant to such a document to the same
7 extent as if the payment, delivery, transfer, access or
8 issuance had been made or granted to the representative of the
9 estate. Such person, corporation, or financial institution is
10 not required to see to the application or disposition of the
11 property; but each person to whom a payment, delivery,
12 transfer, access or issuance is made or given is answerable
13 therefor to any person having a prior right and is accountable
14 to any representative of the estate.

15 (e) Distributions pursuant to an affidavit substantially
16 in the form set forth in subsection (b) of this Section may be
17 made to the affiant, if so specified in paragraph 11,
18 notwithstanding the disclosure of known unpaid debts. The
19 affiant, acting on behalf of the decedent's estate, is
20 obligated to pay all valid claims against the decedent's estate
21 before any distribution is made to any heir or legatee. The
22 affiant signing the small estate affidavit prepared pursuant to
23 subsection (b) of this Section shall indemnify and hold
24 harmless all creditors, heirs, and legatees of the decedent and
25 other persons, corporations, or financial institutions relying
26 upon the affidavit who incur loss because of such reliance.

1 That indemnification shall only be up to the amount lost
2 because of the act or omission of the affiant. Any person,
3 corporation, or financial institution recovering under this
4 subsection (e) shall be entitled to reasonable attorney's fees
5 and the expenses of recovery.

6 (f) The affiant of a small estate affidavit who is a
7 non-resident of Illinois submits himself or herself to the
8 jurisdiction of Illinois courts for all matters related to the
9 preparation or use of the affidavit. The affidavit shall
10 provide the name, address, and phone number of a person whom
11 the affiant names as his agent for service of process. If no
12 such person is named or if, for any reason, service on the
13 named person cannot be effectuated, the clerk of the circuit
14 court of the county or judicial circuit of which the decedent
15 was a resident at the time of his death shall be the agent for
16 service of process.

17 (f-5) If the affiant makes distributions from the estate in
18 violation of this Section, an heir or legatee may file with the
19 court an affidavit, under penalty of perjury, alleging the
20 facts which constitute making distributions from the estate in
21 violation of this Section. The affidavit shall be accompanied
22 by any evidence the heir or legatee has to support his or her
23 claim. If the court determines that distributions from the
24 estate have been made in violation of this Section, the court
25 shall enter an order directing all persons or entities which
26 received a distribution under the affidavit to submit any

1 property received to the clerk of the circuit court within 30
2 days of the order. The court shall then commence proceedings to
3 determine the proper distribution of the estate and enter
4 orders for the distribution of the property in accordance with
5 this Section.

6 (g) Any action properly taken under this Section, as
7 amended by Public Act 93-877, on or after August 6, 2004 (the
8 effective date of Public Act 93-877) is valid regardless of the
9 date of death of the decedent.

10 (h) The changes made by this amendatory Act of the 96th
11 General Assembly apply to a decedent whose date of death is on
12 or after the effective date of this amendatory Act of the 96th
13 General Assembly.

14 (i) The changes made by this amendatory Act of the 98th
15 General Assembly apply to a decedent whose date of death is on
16 or after the effective date of this amendatory Act of the 98th
17 General Assembly.

18 (Source: P.A. 97-1150, eff. 1-25-13; 98-836, eff. 1-1-15.)".